

FILED
U.S. BANKRUPTCY COURT
2014 MAR 25 AM 11:24
NORTHERN DISTRICT OF OHIO
YOUNGSTOWN

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF OHIO

IN RE:

APPLICATION OF 11 U.S.C.
§§ 1328(h) AND 522(q)
IN CHAPTER 13 CASES

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* HONORABLE KAY WOODS
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* AMENDED ADMINISTRATIVE
* ORDER NO. 08-11
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Dated at Youngstown, Ohio this 25th day of March, 2014.

This Administrative Order is hereby amended, effective March 25, 2014, to reflect statutory adjustments to exemption values and update applicable references.

Section 1328 of Title 11 sets forth exceptions to granting a debtor a discharge in a chapter 13 case. Specifically, subsection 1328(h) provides:

The court may not grant a discharge under this chapter unless the court after notice and a hearing held not more than 10 days before the date of the entry of the order granting the discharge finds that there is no reasonable cause to believe that-

(1) section 522(q)(1) may be applicable to the debtor; and

(2) there is pending any proceeding in which the debtor may be found guilty of a felony of the kind described in section 522(q)(1)(A) or liable for a debt of the kind described in section 522(q)(1)(B).

11 U.S.C. § 1328(h) (West 2014).

Subsection 522(q) of Title 11 provides:

(1) As a result of electing under subsection (b)(3)(A) to exempt property under State or local law, a debtor may not exempt any amount of an interest in property described in subparagraphs (A), (B), (C), and (D) of

subsection (p)(1) which exceeds in the aggregate \$155,675 if-

(A) the court determines, after notice and a hearing, that the debtor has been convicted of a felony (as defined in section 3156 of title 18), which under the circumstances, demonstrates that the filing of the case was an abuse of the provisions of this title; or

(B) the debtor owes a debt arising from-

(i) any violation of the Federal securities laws (as defined in section 3(a)(47) of the Securities Exchange Act of 1934), any State securities laws, or any regulation or order issued under Federal securities laws or State securities laws;

(ii) fraud, deceit, or manipulation in a fiduciary capacity or in connection with the purchase or sale of any security registered under section 12 or 15(d) of the Securities Exchange Act of 1934 or under section 6 of the Securities Act of 1933;

(iii) any civil remedy under section 1964 of title 18; or

(iv) any criminal act, intentional tort, or willful or reckless misconduct that caused serious physical injury or death to another individual in the preceding 5 years.

(2) Paragraph (1) shall not apply to the extent the amount of an interest in property described in subparagraphs (A), (B), (C), and (D) of subsection (p)(1) is reasonably necessary for the support of the debtor and any dependent of the debtor.

11 U.S.C. § 522(q) (West 2014) (emphasis added).

Subsection 522(q) is only applicable if a debtor elects to exempt property under state or local law and the homestead exemption exceeds \$155,675, which amount shall be adjusted

pursuant to 11 U.S.C. § 104(a). Ohio has opted out of the federal exemptions. The vast majority of debtors who file in this District and in this Court will be allowed to look only to Ohio statutes for exemptions and exemption amounts.¹ Although Ohio increased the amount of certain exemptions in O.R.C. § 2329.66, effective March 27, 2013, there is no exemption that comes close to the exemption amount in § 1328(h). Ohio's homestead exemption is currently \$132,900, effective April 1, 2013 (increased from \$21,625 to \$125,000 on March 27, 2013 and adjusted per O.R.C. § 2329.66(B) effective April 1, 2013), which is considerably less than the amount of \$155,675 in § 522(q) that triggers the exception to discharge in § 1328(h).


As a consequence, this Court finds that § 1328(h) is not applicable to any debtor who claims exemptions only under Ohio law.

In order to be able to determine if a chapter 13 debtor is entitled to discharge and in the interest of judicial economy, this Court hereby orders that for any chapter 13 case filed on or after entry of this Order, a debtor who claims exemptions other than those allowed under O.R.C. § 2329.66 must file a

¹ A debtor whose domicile (i) has been located in Ohio for the 730 days immediately preceding the date of filing the petition; or (ii) has not been located in a single state for such 730-day period, but whose domicile has been located in Ohio for the 180 days immediately preceding the 730-day period or for a longer portion of such 180-day period than in any other place, may only claim the exemptions permitted under Ohio law in O.R.C. § 2329.66. Thus, any debtor who has been domiciled in Ohio for the requisite number of days is limited to the exemptions set forth in the Ohio Revised Code.

written statement, in compliance with Article XI of the chapter 13 plan, which notes the source (federal or other state) the debtor asserts as the basis for such exemptions. This statement, which must be served upon the Standing Chapter 13 Trustee, must be filed contemporaneously with the chapter 13 plan or any amendment or modification thereto that asserts a basis for the debtor's claimed exemptions other than under Ohio law.

IT IS SO ORDERED.



KAY WOODS
UNITED STATES BANKRUPTCY JUDGE